

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

vs

MICHAEL ROJAS-MONTALVO a/l/a/ "FLORA" [3],

Defendant.

CIVIL 17-034 DRD

OPINION AND ORDER

On September 22, 2018, Defendant Michael Rojas-Montalvo ("Defendant") filed a *Motion to Suppress Evidence and Request for an Evidentiary Hearing* (Docket No. 205) seeking suppression of all evidenced seized pursuant to a Terry stop conducted by the Puerto Rico Police Department Officers ("PRPD") while the Defendant was returning to his vehicle with a parcel, which was not addressed to him, at a post office located in San Sebastian, Puerto Rico.

Specifically, the Defendant argues the stop cannot be justified under the Fourth Amendment as the PRPD did not have independent probable cause to search the Defendant's vehicle, including the parcel he picked up. (Docket No. 205 at 2) Further, the Defendant argues that he did not voluntarily consent to the search of the parcel or his vehicle. (Docket No. 243 at 3) Consequently, any detention and search from the moment he was stopped must be suppressed, as they are all "fruits of the poisonous tree." (Docket No. 205 at 8)

On November 26, 2018, the United States filed a *Response in Opposition to Defendant's Motion to Suppress at ECF No. 205* (Docket No. 219). The United States avers that PRPD had a reasonable suspicion that criminal activity was afoot because a reliable informant had provided specific and detailed information regarding a known firearms and a drug trafficker in the area identified as the Defendant. (Docket No. 219 at 8) As a result, the Government argues PRPD complied with the reasonable suspicion standard. Moreover,

the Government alleges that the Defendant provided consent to search his vehicle and the parcel to law enforcement officers by executing a verbal and later written consent form. (Id. at 10)

After analyzing the arguments set forth by both parties, the Court ordered the Government to file the *Miranda Waiver Form* and *Consent to Search Form* executed by the Defendant on the date the stop occurred. (Docket No. 228) The Government complied and submitted the documents. (Docket No. 229) Following this, the Court ordered Defendant to brief the Court as to why evidence seized in this case should be suppressed in light of the documents submitted by the United States showing the Defendant consented in writing to the search and seizure of his property. (Docket No. 231)

In compliance with the Court order, the Defendant filed a motion arguing all evidence obtained from the stop shall nonetheless be suppressed as there was no reasonable suspicion nor probable cause for the intervention. (Docket No. 234 at 1) Further, the Defendant asserts that he executed the consent to search form under intimidating circumstances considering agents had weapons drawn at him at some point prior to him providing consent. (Id. at 4) Subsequently, the Court ordered the Government to provide the Court a copy of the video recording the intervention that occurred between the Defendant and the PRPD. (Docket No. 235). The Government complied with the Court order.

Based on the documents submitted, the Court holds no suppression hearing is warranted. As such, the Court will proceed to evaluate the Defendant's claims.

II. FACTS

On October 22, 2015, agents from the PRPD received information that the Defendant was going to receive pounds of marijuana through the U.S. Postal Service. (Docket No. 219 at 3) An anonymous informant specifically advised that the Defendant was a supplier of marijuana and firearms. (Id.) The informant further explained that the Defendant often received marijuana and firearms by mail every three to four weeks. (Id.) Moreover, the informant told PRPD that between October 26-30, 2015, the Defendant was expecting a package containing approximately thirteen (13) to fifteen (15) pounds of marijuana. (Id.) The informant

additionally provided the Defendant's physical description, the area where he lives, and a description of the vehicles he commonly drove. (Id.) The informant provided the license plate number for a black Dodge Ram 4 door pick-up truck that the Defendant drove. (Id.) As stated before, the PRPD also previously knew the Defendant to be a drug trafficker who was armed and a dealer of firearms. (Id. at 3-4)

On October 26, 2015, PRPD established a surveillance at the post office located in San Sebastian, Puerto Rico. (Id. at 4) The agents observed a black Dodge Ram pick-up truck bearing the license plate number provided by the informant, and with very dark tinted windows, enter the post-office's parking lot. (Id. at 4). The Government provided the Court with two video clips recording the PRPD intervention with the Defendant. The first video clip shows the Defendant arriving in a Dodge Ram pick-up truck, entering the post office, and subsequently exiting the post office with a parcel in his shoulder (hereinafter, "video 1"). The second video clip shows the intervention between PRPD and the Defendant commencing when the Defendant was advised of his Miranda Warnings and ending with the Defendants arrest (hereinafter, "video 2").

The first video shows the Defendant parked his vehicle, stepped out of the car, and walked towards the post office. (See video 1) The agents identified the Defendant as the individual described by the informant. (Docket No. 219 at 4) After a few minutes, the Defendant exited the post-office carrying a parcel on his shoulders. (See video 1) PRPD stopped the Defendant while he was entering with the parcel into the black Dodge Ram pick-up truck. (Docket No. 205 at 1) The Defendant alleges there were approximately eight to ten law enforcement agents, some of whom had rifles pointed at him¹. (Id.) The parcel had been left placed in the driver's seat. (Docket No. 219 at 4) The Government contends the parcel was addressed to a female named Jannette Gonzalez but contained the Defendant's postal address. (Id.; Docket No. 205 at 2) There was no person in the Dodge Ram pick-up truck with the name Jannette Gonzalez. (Docket No. 219 at 4)

¹Conversely, the Government asserts there were no rifles drawn or pointing at the Defendant when PRPD approached. (Docket No. 219 at 4)

Pursuant to the Defendant's contentions, PRPD agents "removed [the Defendant] from his vehicle and searched [the vehicle]." (Docket No. 205 at 1) A drug sniffing dog was then brought to the scene, and the dog marked the box. (Id. at 2) The agents opened the box without a warrant. (Id. at 2) Upon opening the box, the agents discovered a 14-pound marijuana block (Id.) The Defendant was then arrested and transported to the police station. (Id. at 3)

By comparison, the Government alleges the Defendant knew beforehand one of the intervening PRPD agents named Agent Albin Luis Rosado, who approached the Defendant and calmly spoke to him when the Defendant returned to his car with the parcel. (Docket No. 219 at 4) According to the Government, the agents advised the Defendant of his Miranda Warnings, the Defendant signed a waiver and then agreed to speak to law enforcement officers. (Docket No. 219 at 4-5; Docket No. 229, Exhibit 2) Further, the agent advised the Defendant he could provide consent to search the vehicle and parcel, or they could have the canine approach the vehicle. (Docket No. 219 at 5) Before the agent even finished explaining the details, the Defendant verbally consented to the search of the vehicle and the parcel. (Docket No. 219 at 5) The canine alerted positive to the presence of controlled substance in the parcel. (Id.) Subsequently, the Defendant signed the consent to search form. (Docket No. 229, Exhibit 1) After the written consent of Defendant, the PRPD opened the box in the presence of the Defendant and revealed a green leafy material, which was later confirmed by the laboratory to be marijuana. (Id.)

III. DISCUSSION

A. Legality of the Stop

According to the Defendant, the police stop violated his 4th Amendment rights because there was no independent probable cause to search the vehicle or the parcel. (Docket No. 205 at 2). Specifically, Defendant alleges that neither him nor anyone was caught engaged in any conduct considered remotely suspicious or illegal. (Id.) By comparison, the Government argues PRPD officers had reasonable suspicion that criminal activity was developing as a confidential informant has previously revealed detailed information

about the Defendant, as well as the dates and location where the Defendant was to receive the parcel.
(Docket No. 219 at 8)

An “investigative stop,” or a “Terry stop,” occurs when a police officer, acting on reasonable suspicion of criminal activity, briefly detains a citizen to confirm or dispel his suspicion. Terry v. Ohio, 392 U.S. 1, 30 (1968). The Supreme Court has in recent years explained that this type of investigative stop is not confined to the momentary, on-the-street detention accompanied by a frisk for weapons, and has widened this exception to encompass other circumstances where officers are authorized to perform brief investigative stops or seizures of individuals upon reasonable suspicion that they may have committed, are committing, or are about to commit a crime. See United States v. Quinn, 815 F.2d 153, 156 (1st Cir.1987). However, there is no mechanical formula to facilitate the distinction between such investigative stops, on the one hand, and those detentions, on the other, which though not technical, formal arrests, are the “equivalent” to an “arrest” and therefore require probable cause. Id. A formal “arrest,” nonetheless, occurs when an officer, acting on probable cause that an individual has committed a crime, detains that individual as a suspect. Id.

Most critical, police officers are not limited to personal observations in conducting investigatory activities, and reasonable suspicion for a *Terry* stop may be based on prior information furnished by others. See Adams v. Williams, 407 U.S. 143, 147, (1972). Where, as here, the police act on information from a confidential informant, “law enforcement must provide some information from which a court can credit the informant's credibility.” United States v. White, 804 F.3d 132, 136 (1st Cir. 2015) (*quoting* Ramírez–Rivera, 800 F.3d 1, 27 (1st Cir. 2015)). In assessing an informant's credibility, the First Circuit has established the following factors to consider: “(1) the probable veracity and basis of knowledge of the informant; (2) whether an informant's statements reflect first-hand knowledge; (3) whether some or all of the informant's factual statements were corroborated wherever reasonable and practicable; and (4) whether a law enforcement officer assessed, from his professional standpoint, experience, and expertise, the probable significance of

the informant's information.” United States v. Gonsalves, 859 F.3d 95, 104 (1st Cir. 2017)(quoting U.S. v. White, 804 F.3d at 137).

In this case, the Government contends it received information from an informant that the Defendant was a known firearms and drug trafficker in the San Sebastian, Puerto Rico. (Docket No. 219 at 8) The information that was disclosed to the PRPD evidenced a significant basis for first-hand knowledge regarding the Defendant's activities. For example, the informant reported the amount of times a week the Defendant received marijuana and firearms by mail, the Defendant's physical description, the area where the Defendant lived, and a description of the vehicles the Defendant was known to drive including the make and license plate number. Moreover, the informant gave information specifically that the Defendant was expecting a package containing approximately thirteen (13) to fifteen (15) pounds of marijuana between October 26-30, 2015. The information provided by the informant was consistent with the knowledge PRPD had about the defendant, which was that he was known to be a drug trafficker. (Docket No. 219 at 3)

One of the intervening officers, PRPD Agent Albin Luis Rosado, personally knew the Defendant because they lived in the same area, and thus it was easy to corroborate whether the Defendant lived in the area where the informant specified. (Docket No. 219 at 4) Moreover, Agent Rosado previously worked in an investigation where the Defendant was one of the targets dealing in firearms and narcotics, thus increasing the probable veracity of the informant's information. (Id.)

Viewing the facts and circumstances in their totality, the Court concludes that, at the time of the stop, officers had reason to believe that the Defendant picked up a parcel containing drugs, and that a search of the parcel would yield evidence of drug dealing activity. See U.S. v. Taylor, (162 F.2d 12, 19 (1st Cir. 1998))(holding informant's tip was easy to verify when informant “furnished specifics as to the make and color of the car, its registration number, a description of the occupants, and the neighborhood where they were making drug stops.”) Therefore, under *Terry*, PRPD had reasonable suspicion to stop and search the Defendant's parcel and vehicle.

B. Validity of Defendant's Consent

The Government provided the Court with copies of a *Consent to Search Form* and *Warnings Form for Suspects in Custody* (Docket No. 229), thus showing the Defendant consented to have his vehicle and parcel searched. The Government also provided a two video clips. The first video shows the surveillance of the Defendant first arriving in the Dodge Ram pick-up truck, then entering the post office, and later exiting with the parcel. The second video shows the Defendant signing the Miranda Waiver Form and the Consent to Search Form, the canine, and the arrest of the Defendant. The Defendant, however, contends that consent was given under duress or coercion as video does not “[d]irectly reflect the fact that the agents had weapons drawn at some point prior to the consent, defendant affirms that they most certainly did.” (Docket No. 234 at 4)

Consent to search is one of the exceptions which obviates the need for a warrant. United States v. Donlin, 982 F.2d 31, 33 (1st Cir.1992). Moreover, valid consent may be given by a defendant or a third party with “common authority” over the premises. Id., citing United States v. Matlock, 415 U.S. 164, 171 (1974). After reviewing the video and the forms submitted by the Government, the Court determines the allegations of the Defendant are not credible. First, the Defendant alleges he was surrounded in a parking lot by up to ten agents that had weapons drawn at some point prior to the consent. (Docket No. 234 at 3-4) The video provided by the Government do not show PRPD agents pointing any weapons at any point to the Defendant.² Even though there is no video recording the initial contact with the Defendant, the officer who had the most contact with Defendant was dressed in regular clothing and does not even have a rifle with him. There is only one visible rifle shown throughout the entire video and it is found on tucked in one of the agent's waist, and hence not pointed to the Defendant. (See video 2 at second 6) Moreover, contrary to the Defendant's allegations, the video shows the Defendant and PRPD agents calmly speaking to each other. Based on the

² Further, the confidential informant had stated that the Defendant dealt with receiving thru the mail drugs and weapons. Hence, the police had to take measures with weapons near them or with them.

demonstrative evidence provided, the Court understands the Defendant's allegations do not coincide with the calmness and patience shown in video 2 provided by the Government.

Second, the Government asserts the Defendant first verbally provided consent to search his vehicle and the parcel to PRPD, and only after a canine alerted positive to the presence of controlled substances in the parcel, then the Defendant ratified the verbal consent previously given by signing the *Consent to Search Form*. The Defendant does not oppose the allegation set forth by the Government that verbal consent was initially given. (Docket No. 234) Instead the Defendant contends that he "rushed into signing the [consent-to-search] form without being given time to adequately read and review it." (*Id.* at 4) The Defendant, however, does not present any evidence to show that "a very brief time of perhaps minutes elapsed during which the agent had the defendant complete the consent-to-search form." The video provided by the Government clearly shows the PRPD officer who mostly intervened with the Defendant brought the *Consent to Search Form* and began to hand write descriptions for the Defendant's parcel and vehicle. (See video 2 at minute 7:18) It is important to note, that at this moment, the parcel picked up by the Defendant had not yet been opened. Moreover, the Defendant had not been arrested, and there were no agents pointing guns at him during the entire 3 minutes and 21 seconds that elapsed between the moment the PRPD agent began to fill the *Consent to Search Form* and the time it was executed by the agent and the Defendant. (See video 2 from minute 5:38 until 8:59) Consequently, the Defendant was free to withdraw consent at any time prior to the opening of the parcel; however, he did not withhold from the written consent. Moreover, one can clearly hear from the video the PRPD agent requesting the Defendant to read the *Consent to Search Form*. Hence, the Court finds that the Defendant's vehicle and parcel were legally searched and seized upon the Defendant's voluntary consent to search both items, and that the investigatory stop conducted by the law enforcement

agents, as well as the search of the Defendant's vehicle and parcel, were reasonable without offending the Fourth Amendment warranties.³

III. CONCLUSION

Therefore, the Defendant's *Motion to Suppress Evidence and Request for an Evidentiary Hearing* (Docket No. 205) is **DENIED**.

IT IS SO ORDERED.

On this 4th day of February, of the year 2019.

s/ Daniel R. Dominguez
DANIEL R. DOMINGUEZ
UNITED STATES DISTRICT JUDGE

³ The Court notes that the Defendant was not arrested when the dog sniffed the package. He was arrested and handcuffed after the parcel was opened and confirmed there was a green leafy substance that looked like marijuana taking into consideration that prior thereto the dog signaled positive to the drug presence in the package. See video 2.